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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF GEORGIA
3 ATLANTA DIVISION

4 DONNA CURLING, ET AL., :
5 :
6 PLAINTIFFS, :
7 VS. : DOCKET NUMBER
8 BRAD RAFFENSPERGER, ET AL., : 1:17-CV-2989-AT
9 DEFENDANTS. :
10

11 TRANSCRIPT OF DISCOVERY CONFERENCE PROCEEDINGS

12 BEFORE THE HONORABLE AMY TOTENBERG

13 UNITED STATES DISTRICT SENIOR JUDGE

14 SEPTEMBER 9, 2022

15 1:09 P.M.

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21 MECHANICAL STENOGRAPHY OF PROCEEDINGS AND COMPUTER-AIDED

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P R O C E E D I N G S

(Atlanta, Fulton County, Georgia; September 9, 2022.)

3 THE COURT: Good afternoon, everybody. We are here
4 for a conference in Curling, et al. v. Raffensperger, et al.,
5 Case Number 1:17-CV-2989.

6 It looks like we have -- I'm looking around -- Mr.
7 Cross and Mr. Sparks for Curling. Is that --

8 MR. CROSS: Yes, Your Honor.

9 THE COURT: And Mr. Brown here for the Coalition.
10 And do we have Mr. McGuire from afar or not?

11 MR. McGUIRE: Yes, Your Honor. I'm on too.

12 THE COURT: Okay. And for the State of Georgia, we
13 have got Mr. Belinfante, Mr. Miller, and Mr. Russo.

14 MR. RUSSO: And, Your Honor, we also have Mr. Pico
15 Prats with our firm. And Mr. Tyson said he would try to join
16 if his deposition ended.

17 THE COURT: Okay. And how do you spell Mr. Prats'
18 last name?

19 MR. PICO PRATS: It is P-I-C-O and then a space and
20 P-R-A-T-S.

21 THE COURT: Great.

22 All right. The Court has convened this conference in
23 light of the request from the plaintiff. And the first
24 question obviously I put forth there and also had emailed you.
25 And I don't know how the plaintiffs want to divide this.

1 But it would be helpful, I think, as an initial
2 matter for each side to address how the Coffee County data
3 system breach issue fits into your respective and original
4 claims and your theory of the case and the defenses presented
5 in the lawsuit.

6 MR. CROSS: Good afternoon, Your Honor.

7 THE COURT: Good afternoon.

8 MR. CROSS: I'll go first, and Mr. Brown may have
9 some additional thoughts.

10 Let me start with -- in answering that question, let
11 me start with the positions that the State has taken and
12 explain why the Coffee County piece is so critical for our
13 case.

14 In Mr. Tyson's opening statement in September of 2020
15 at the PI hearing, he said, the plaintiffs offer a series of
16 theories. They are still not backed up by any evidence of any
17 compromise of a component of any part of the system. The
18 plaintiffs are unable to connect any of these dots they are
19 putting on the page, and everything they offer is speculative.

20 In the sur-reply that they filed, they stated,
21 Curling plaintiffs cite no evidence that the Dominion system
22 has ever been compromised.

23 More recently in a brief on standing that Your Honor
24 asked for specifically, they said, of course, there is also
25 zero evidence that any BMD used in any election has ever been

1 actually compromised. All of plaintiffs' injuries are
2 therefore hypothetical and generalized whether looked at on a
3 pleading standard or based on the current evidence in the
4 record.

5 And so, Your Honor, the State has consistently taken
6 the position that the vulnerabilities that we have established
7 in the system through Dr. Halderman, validated by CISA earlier
8 this year -- that they don't matter because the system is
9 locked down, that it is secure, and that all of these
10 vulnerabilities are theoretical.

11 In fact, to use Secretary Raffensperger's own words,
12 he did a live interview with Mark Niesse in February of this
13 year, and this is what he had to say. Halderman was actually
14 given security codes, so he had full access of the equipment,
15 and he had it for 12 weeks and he comes back with his report
16 and says, quote, well, if you have that kind of access, then
17 you could change things. Secretary Raffensperger goes on to
18 say, well, duh, yeah.

19 That is our case, Your Honor. Secretary
20 Raffensperger acknowledged that if someone were to get the kind
21 of access that Dr. Halderman got, which is a tiny, tiny
22 fraction of the access that we now know occurred in Coffee
23 County, they could change things. They could engage in all
24 kinds of mischief.

25 Merritt Beaver, the CIO, testified that the reason it

1 is so critically important to lock down this system, to make
2 sure that no one gets access is because once you get access,
3 once you get the Dominion software, in his words, that is the
4 roadmap, the roadmap for the system.

5 And so, you know, there's always been a disagreement
6 in this case about whether our concerns rise to the level that
7 they warrant a constitutional violation. The State takes the
8 position they don't. They are certainly entitled to take that
9 position.

10 But their principal defense -- and I would submit
11 this, Your Honor -- really their only defense that is left
12 before we learned about the breach was that yes, it has these
13 software vulnerabilities. Dr. Halderman's report is not
14 refuted. Dr. Gilbert, their expert, did not disagree with any
15 of his technical findings. But it is okay because no one could
16 ever exploit them.

17 And what we now know is in Coffee County a number of
18 different actors, whose motives I think can best be
19 characterized most generously as questionable, had extensive
20 access.

21 All Dr. Halderman got was a single BMD and a single
22 precinct scanner and an off-the-shelf printer that is used with
23 that system. And he was able to hack it in three days with
24 just that.

25 We now know that a team from Sullivan Strickler, in

1 their words, copied everything that had data on it. That is
2 their testimony in the 30(b) (6). And they were there at the
3 direction of Cathy Latham, the head of the GOP at the time;
4 Misty Hampton, the election supervisor at the time; Eric
5 Chaney, a member of the Board of Elections at the time; Ed
6 Voyles, former chair of the board who was there. And the
7 direction they got was copy everything.

8 There was a man named Scott Hall who has been
9 identified in some of the discovery we got as Trump's man on
10 the ground. His direction to them time and again was copy
11 everything. And they say they did. We have half a terabyte of
12 data.

13 And let me be clear about what that is. It is not
14 just voting data. It is the software. It is what Mr. Beaver
15 said is the roadmap for the system.

16 And that wasn't the only visit. Scott Hall came in
17 in that visit with someone that Sullivan Strickler identified
18 as programmer -- a programmer sitting in that office. Then
19 Doug Logan with Cyber Ninjas, notorious for their work in
20 Arizona, came back with Jeffrey Lenberg, another computer
21 science person. And they spent two days in the office,
22 January 18 and 19. We don't know what they did inside.

23 Jeffrey Lenberg then came back and spent five
24 straight days, hours each day in that office. We do not have
25 insight into what he did. But these are people who are

1 self-professed computer science experts. Lenberg himself
2 identifies himself as someone who part of his expertise is
3 hacking systems. That is what he does. And he sat in that
4 office with access to everything. Not just a couple of pieces,
5 like Dr. Halderman, disconnected from the system. He had
6 access to every computer, including, Your Honor, the computer
7 that connects in to the State system.

8 Because, remember, the way the system work is the
9 tabulation results have to come off the EMS server. First,
10 they came off the scanners. They go to the EMS server. They
11 then have to get to the State. That is done through the ENR,
12 the election night reporting system. And that is a computer
13 that is connected to the internet that sits in every county
14 office that then runs back to the state.

15 So people, who I think you could fairly say their
16 integrity is in doubt, had unfettered access to this, what
17 amounts to about 8, 9, or 10 days to do whatever testing they
18 wanted, to copy whatever they wanted, and to figure out if you
19 wanted to exploit an election -- to exploit any of the
20 vulnerabilities that are unrefuted from Dr. Halderman, this is
21 how you would do it.

22 And worse, Your Honor, Sullivan Strickler took all
23 that data, the Dominion software, the roadmap for the system,
24 and put it on the internet. And we have the download files for
25 at least some period of time where we can see a lot of

1 different people from Doug Logan to many other names folks have
2 seen in the press where they routinely downloaded the Dominion
3 software for the central scanner, for the EMS server, for the
4 precinct scanners, for all of the different flashcards and
5 memory cards and thumb drives that are part of this system.
6 Downloaded it time and time again.

7 And what is also disturbing, Your Honor, is they
8 uploaded files. And one of the questions we have is: What did
9 they change? Why did they download those files, do something
10 with them, and then put them back up? And whatever gets
11 uploaded is then accessible to whoever has access to that
12 ShareFile.

13 There is an individual named Ben Cotton -- one of the
14 ways that we first started to think, well, maybe this breach
15 actually occurred was when we saw testimony from Ben Cotton
16 earlier this year saying that he had actually analyzed the
17 Fulton County Dominion software. And Mr. Cotton testified that
18 the user log-ins that were provided by Sullivan Strickler were
19 also shared.

20 So what that means is when we look at the download
21 and upload log, we can see the user log-in but we don't know
22 who is behind that. It could be someone other than the
23 individual that was assigned to. And then, of course, we
24 have --

25 THE COURT: All right. Just slow down for me for a

1 second.

2 MR. CROSS: Sorry.

3 THE COURT: Maybe you can explain to me the Ben
4 Cotton business you just were speaking of because I hadn't
5 heard his name other than seeing it referenced here before --

6 MR. CROSS: So --

7 THE COURT: -- what you are saying his role was
8 according to you.

9 MR. CROSS: Yes, Your Honor. And kind of taking a
10 step back, the way this sort of unfolded for us was, you know,
11 there is this call from Scott Hall, a bail bondsman, sometime
12 last year -- reached out to Ms. Marks. And we have heard a lot
13 about that call.

14 I will tell you candidly I don't recall when I first
15 heard of that. I think it was sometime this year. I thought
16 that was insane, the idea that this man was saying, we went in
17 and we copied everything. That seemed unthinkable.

18 And so certainly we did not aggressively pursue it.
19 That is an issue that the State has raised. But it seemed
20 unthinkable that what happened in Coffee County could ever
21 happen. We obviously have been concerned about a breach but
22 not of this size and magnitude.

23 Then what happens is we learn that this man, Ben
24 Cotton, who identifies as a computer science expert, provided a
25 declaration in a case in Arizona where he testified that he had

1 been retained by a lawyer I believe named Stefanie Lambert to
2 analyze the Dominion software from Coffee County and from
3 Fulton County. And he then testified live in a PI hearing over
4 the summer where he provided a little more insight into that.

5 So once the Ben Cotton piece came out, that is when
6 it started to kind of dawn on us maybe something actually
7 happened here. So that is when we started to try to pursue
8 this in discovery. And that is when we ended up in front of
9 Your Honor, I think, in May or June when we got the permission
10 to serve subpoenas.

11 So Ben Cotton is another piece of this where he has
12 testified he has analyzed this software extensively. We don't
13 have any insight into his analysis. We frankly haven't asked
14 for that. We don't need it. And I'm not -- we're not
15 interested in his views on that.

16 But it shows the scope and the reach of this. That
17 what you have at the highest level is an interstate effort that
18 is organized and overseen by Sidney Powell. She signs the
19 engagement letter for Sullivan Strickler to do the copying in
20 Coffee County. Jesse Binnall, one of Donald Trump's personal
21 lawyers, also signed an engagement specifically for copying
22 voting data in Georgia. Those letters are signed, Sidney
23 Powell on December 6 of 2020; Jesse Binnall on November 30,
24 2020.

25 And those letters also include efforts to get access

1 to voting equipment in Michigan and in Nevada. And then the
2 data that comes out of Coffee County ultimately makes its way
3 to Ben Cotton in a case in Arizona.

4 And so all of this to get back to your question, Your
5 Honor, is there is -- it is undisputed that the facts in this
6 case are that if anyone ever got access to the Dominion
7 software that's used on these various pieces of equipment or --
8 and if they got access to the equipment itself, which is still
9 used -- and the Coffee County voting equipment, apart from the
10 EMS server and the ICC, have never been replaced. They are
11 still used, all the thumb drives, all the flash drives that
12 were copied, all of the ICPs, the precinct scanners, the
13 laptops. Everything that was copied, other than the ICC and
14 the server according to the State which they took in June of
15 2021, as we understand it, has continued to be used and is
16 still there today for use. We just deposed the Coffee County
17 Board of Elections on that, I think, last week.

18 And so what it comes back to for us is we are way
19 beyond the defense that the State has always asserted that we
20 are in a world of theory and speculation. We are not in a
21 world of conjecture. We're in a world candidly, Your Honor, I
22 never, ever predicted.

23 I recall we asked Your Honor -- in August, September
24 of 2020, we asked to get access -- I think maybe after the
25 hearing as well -- access to a county EMS server because we

1 wanted to be able to do the analysis beyond just the BMD. And
2 Your Honor's response in your order was, well, we haven't shown
3 that there has ever been a compromise to the equipment. And
4 Your Honor sort of accepted, understandably, their position
5 that before you give us access to that level of sensitive
6 equipment and sensitive software we should have more than just
7 a theoretical concern that the equipment could be breached.

8 And I literally remember saying to my team, well,
9 we're never going to meet that standard. How could we ever
10 find out that there was a breach of equipment?

11 And we are in a world that is way beyond that where
12 literally dozens of individuals from what we can see went into
13 the office, spent time in the office day after day after day,
14 and then sent that out into the ether. And we don't even know
15 who all has it and what they have done with it for a year and a
16 half.

17 And so our view is, Your Honor, we're at a point
18 where if anyone is moving for summary judgment it probably
19 should be us, because I don't see how they can continue to
20 defend a system that has been breached this badly, that has
21 these vulnerabilities that, again, are not disputed. The
22 software vulnerabilities -- there is no expert that has
23 testified in this case that disputes those findings and those
24 vulnerabilities.

25 And now their one defense to that is to say but no

1 one could ever get access to the system. Secretary
2 Raffensperger has been in the press repeatedly saying that
3 before the Coffee County breach no one could ever get access to
4 the system. So this is all theory. It is pie in the sky. It
5 is not.

6 And the last thing I want to be clear about, Your
7 Honor, is it is often thrown at us, including in the filing
8 last night, saying that we're just like the plaintiffs in this
9 Pearson case. I want to be very clear about this. Each time
10 the State says to us that we are Sidney Powell, we are Rudy
11 Giuliani, we are Lin Wood, it is deeply, deeply offensive to my
12 clients. And it is just wrong.

13 And, in fact, there is a tragic irony here that even
14 though this happened a year and a half ago, even though the
15 Secretary's office was on notice in May of 2021, which I'll
16 come back to, that this access may have happened, we are the
17 ones that brought this to light. We are the ones who have
18 spent an enormous amount of time and money from flying to areas
19 of Georgia I never thought I would see to depose people and to
20 get documents and to get data and chasing down things like the
21 video footage from Coffee County that we were repeatedly told
22 for many months did not exist.

23 We spent a lot of time and money chasing that down
24 until they were finally forced to admit that they had it and
25 turned it over at the last minute that shows the people coming

1 and going, that show that people like Ms. Lathem were not
2 truthful in their deposition.

3 So I just -- I do want to be clear for all of the
4 plaintiffs that our view has never been -- we have never
5 alleged a hack of the system in the past. We are not part of
6 the Stop the Steal campaign. We believe that that is
7 completely bogus. It is inappropriate. They have misused work
8 in this case from us, from Your Honor, from others.

9 Our case is quite simply that there is a system that
10 is used in the environment in Georgia that because of the way
11 it operates and because of the way it has been maintained and
12 now the access it has had to it that voters cannot have
13 reasonable confidence that their vote will count when it is
14 cast.

15 And the State gets upset when we say that because
16 they say, well, you are undermining voter confidence. And to
17 that I say no. What undermines voter confidence is what
18 happened in Coffee County. What undermines voter confidence is
19 the fact that the State has not shown any effort to investigate
20 what happened in Coffee County until just the last few weeks
21 when the GBI we now know was brought in, which is great. We're
22 happy to see that.

23 But to the other point that I alluded to a moment
24 ago, in May of 2021, James Barnes, who replaced the election
25 supervisor, Misty Hampton -- she was the one who let the team

1 into the office in January of 2021. Coffee County replaced her
2 with James Barnes. James Barnes emailed -- and I have the
3 email that I can hand the Court if you need to see it. It may
4 already be in the record.

5 James Barnes finds attached to her computer a
6 business card from Doug Logan of Cyber Ninjas. Right? At this
7 point, that organization was already in the press for the bogus
8 audit that they did in Arizona.

9 Dominion I think the day before sent a note out to
10 their jurisdictions, to county supervisors, and says -- warns
11 them that individuals like Doug Logan, Cyber Ninjas, are trying
12 to get access to voting equipment under the auspices of an
13 audit. And Dominion made clear to everyone this is not legit,
14 you cannot give access to anyone to the equipment.

15 Mr. Barnes understandably gets concerned because he
16 sees this card for that organization sitting in the office that
17 he now handles. He emails that business card to Chris Harvey,
18 the State election director, and says, I'm worried about this.
19 I'm alarmed is his word.

20 Chris Harvey, to his credit, within a few days -- I
21 think it may have been the next business day. There may have
22 been a weekend in between -- quickly sends that on -- responds
23 to Mr. Barnes. And he adds two very important people, Frances
24 Watson, the head of the investigative unit at the time in the
25 Secretary's office, and Michael Barnes, the long-time head of

1 CES.

2 And Mr. Harvey writes back sharing the alarm that
3 Mr. Barnes had conveyed and calls for an investigation by
4 Ms. Watson specifically into the question of whether there may
5 have been improper access with the Coffee County election
6 equipment. Ms. Watson forwards that on to someone named Pamela
7 Jones. My best guess is she's an investigator in Ms. Watson's
8 office because Ms. Watson says to Ms. Jones, follow up with
9 Mr. Barnes and let's find out what happened here.

10 So they get this alert. And everybody does the right
11 thing. Immediately they jump on this and say we're going to
12 investigate and figure out was there access. And then it just
13 dies. There is not a single document from the State indicating
14 that anything was done.

15 And we have now spoken with every single person
16 involved with this that we can get access to. James Barnes
17 testified under oath he never heard another word from the
18 State. Nobody came to him and said what Ms. Watson had
19 directed and Mr. Harvey had directed. Did anybody get improper
20 access? No one in Coffee County on the Board of Elections had
21 ever heard of this issue. Didn't know there was even a concern
22 about Cyber Ninjas. No one from the State came to look at the
23 equipment other than replacing the EMS server and the ICC in
24 June.

25 But, again, remember, their explanation for that

1 isn't that they were worried about a compromise of the system,
2 which is what Mr. Harvey had raised, but because the password
3 just stopped working on the EMS server. And to this day, we
4 don't know why that was. We can probably guess. But we don't
5 know.

6 Then fast forward -- so there is no evidence of any
7 investigation by the State when they get this incredibly
8 alarming warning from the election supervisor. Fast forward to
9 April of this year. And Gabe Sterling at a public conference
10 says there are these allegations about a breach in Coffee
11 County, we have investigated it, and it didn't happen.

12 So somewhere along the way, the State reached a
13 conclusion that the breach we now know occurred did not. And
14 we have asked time and time again for some evidence of an
15 investigation. And we have seen none.

16 And so that, Your Honor, is what I would respectfully
17 submit undermines voter confidence. And that is all part of
18 the importance of our case. Because the other piece of this
19 is: The only way to secure a system is people have to know
20 that if they breach that system they are going to be held
21 accountable. And these people almost got away with it.

22 The video that we now have from Coffee County that
23 shows the people who were there -- it is an incredible irony as
24 to how we got that. The only reason we have that video, which
25 again the county claimed for -- their lawyers claimed for many

1 months did not exist -- is because in February of 2021 they let
2 the two election -- two election office employees go
3 purportedly for time sheet fraud.

4 The way they did that was they pulled surveillance
5 video from the office and they looked when those employees came
6 and went and compared that to their time sheets. Otherwise,
7 that surveillance video all gets overwritten every 90 days
8 apparently.

9 So it turns out someone -- we don't know who because
10 they won't tell us -- held on to that video. And so just
11 coming out of the fact that they decided to look into the time
12 sheets for these two individuals and pull the video and it
13 captured that window and they still have it, we have it.
14 Otherwise, we wouldn't have that.

15 And so, Your Honor, I guess just to net it out --
16 Your Honor, the one other thing I wanted to say is the other
17 thing we often hear from the State -- and Secretary
18 Raffensperger himself has been quite emphatic on this -- is
19 that what Dr. Halderman did is not real world. They say, well,
20 he got access to the equipment, and that is not real world.
21 Because by getting access to the equipment, you know, that
22 would never happen in the real world. Well, it did. We know
23 that.

24 But here is the other piece. And I do want to make
25 this clear. What Dr. Halderman did -- his step-by-step

1 analysis of the equipment, Mr. Beaver, the CIO, testified, that
2 is exactly how a cybersecurity assessment is supposed to go.
3 And they do it in the ordinary course. They don't do it with
4 the election system, which is odd. But they do it with other
5 pieces of the IT components.

6 And this is what Mr. Beaver said. It is referred to
7 as a red hat assessment. The red hat are the bad guys. So
8 they bring in someone like Fortalice. They are the red hat.
9 And they try to breach the system. And what he testified is
10 when they do the red hat he says we gave them the user name and
11 password to a computer that was on our network. Well, why did
12 you give them that access? And he goes on to explain, it is a
13 typical exercise for a red hat. That is how it is done.

14 And so it is frustrating and I would submit, Your
15 Honor, misleading when the State says that what Dr. Halderman
16 did is something out of the norm, it is not how it is done. It
17 is how the Secretary's office itself does it. We wish they
18 would do it on the election system.

19 But where does that leave us, Your Honor? It leaves
20 us --

21 THE COURT: Let me go back for one moment.

22 MR. CROSS: I'm sorry. Go ahead.

23 THE COURT: As to the issue of posting the Dominion
24 software on the internet, is there a record of that?

25 MR. CROSS: Yes, Your Honor. We can actually -- I

1 can hand that up.

2 THE COURT: How did you become aware of it?

3 MR. CROSS: Sure. So we served a subpoena on a man
4 named Paul Maggio. You may recall the litigation. Maggio was
5 the team lead for Sullivan Strickler that did the copying. And
6 once Your Honor denied the motion to quash, they then seemingly
7 have fully cooperated. They produced a lot of evidence,
8 documents. We went back, and they produced more.

9 In two of the things they produced that I will hand
10 up if I may -- sorry. I gave you all the copies. Sorry about
11 that. Two of the things that Sullivan Strickler produced
12 are -- the first one you'll see has like a bunch of black boxes
13 on the front of it. Both have some redactions. But one is --
14 the shorter one is a list of everyone who had access to the
15 Coffee County data and additional data that is blacked out we
16 think -- we understand from Michigan at least it is a list of
17 user names.

18 So you can see who those people are, what their email
19 addresses are, what their names are, and you can see their
20 permissions. Like, for example, did they have the permission
21 to download, upload? Can they delete things?

22 The next piece, the longer document, is an
23 upload/download log that I was talking about earlier. And that
24 shows the user name. And it shows -- if you look at it, that
25 first column that has like a long name that is like a file

1 name, that is the actual file that the individual either
2 downloaded or uploaded to that ShareFile site. And then you
3 can see the date and when they did it.

4 And we have deposed -- we took a 30(b) (6) of Sullivan
5 Strickler. They were very cooperative. They came in and
6 provided a lot of information about what they did. And one of
7 the things they said was at the direction of Doug Logan and Jim
8 Penrose, who is another individual associated with this, under
9 the engagement with Sidney Powell -- they put this all on the
10 internet. And then they would share it with whoever Doug Logan
11 or Jim Penrose told them to share it with that. And that sat
12 on the internet at least through sometime, it sounds like, in
13 the mid to late summer of --

14 THE COURT: You are saying you learned this through
15 the deposition or --

16 MR. CROSS: Both.

17 THE COURT: -- you were reading -- as opposed to
18 somebody such as Dr. Halderman looking at the internet and
19 finding it?

20 MR. CROSS: Correct. That's right. We did not find
21 it on the internet. It is a ShareFile site that is -- to be
22 clear, ShareFile is a cloud service provider. And so that is
23 part of our other concern here is this isn't something that was
24 like a local server in Sullivan Strickler's office that you
25 would get access to. They uploaded it to a third-party company

1 that sits in the cloud. And so anyone with access to their
2 cloud services potentially would have access to that data.

3 And, again, that data sat with -- you can tell by the
4 redactions based on what they have told us with voting data
5 that came from Michigan -- we don't know if there is data from
6 other places. They looked at Nevada at least under the
7 engagement.

8 THE COURT: Because I was trying to figure out -- I
9 mean, the more -- I mean, I'm not saying that that is not on
10 the internet. I'm just saying -- trying to figure out whether
11 anyone was posting about it so others might be -- other members
12 of the public might be accessing it.

13 MR. CROSS: Right. Great question, Your Honor. We
14 haven't seen that. We do know that -- my understanding is Jeff
15 Lenberg who was the one who came on the second trip with Doug
16 Logan and the one who was there for five days -- he put up some
17 sort of YouTube video talking about something that he did in
18 Coffee County.

19 And the other thing also to keep in mind, Your Honor,
20 is every time someone downloaded that data, we don't know where
21 it went from there. We don't know how they maintained it,
22 whether it was secure at all.

23 We do know that the data was also sitting out on a
24 hard drive on two occasions. One of those occasions we know
25 went to a Stefanie Lambert, this lawyer involved with Ben

1 Cotton, because we have a document on that from Paul Maggio's
2 office. That indicates that there was a previous shipment, and
3 we don't know for sure what that was. So the data went out
4 both through the internet and on hard drives to a lot of
5 different folks.

6 THE COURT: Okay.

7 MR. CROSS: So, Your Honor, where that leaves us --
8 right? -- is in a world where --

9 THE COURT: I want you to wrap up because I'm not
10 going to be able --

11 MR. CROSS: Absolutely, Your Honor.

12 Let me just say it this way: This is how I think
13 about it. If we're going on a skydiving trip and we saw a
14 bunch of bad actors unpack our parachutes, take them all apart,
15 and then repack them and put them back and we learned that when
16 we were on an airplane and if the pilot said to you, it is
17 probably fine, your parachute is probably fine, just go ahead
18 and jump and we'll find out when you're in the air, no one
19 would jump out of that plane.

20 That is where we are. It is not an exaggeration.
21 Right? We have lots of people who are widely considered bad
22 actors because of the lies that they spread about the 2020
23 election who had unmitigated access to the election system --
24 not pieces, not disconnected pieces -- the actual system in
25 practice for the better part of two weeks.

1 And we don't know what all they did. But we do know
2 what they could have done. And it is not satisfactory to tell
3 voters, let's just hope the system works. And we have begun an
4 investigation in the last couple of weeks. Let's hope that
5 that doesn't find that the system doesn't work.

6 That, Your Honor, we don't think is an appropriate
7 way to proceed. And that is why this is so critically
8 important for our claims.

9 Thank you, Your Honor.

10 MR. BROWN: Go ahead, Vince.

11 THE COURT: Thank you. Is there anything else from
12 the plaintiffs' side, or did you speak on behalf of everybody?

13 MR. BROWN: I don't have anything further, Your
14 Honor.

15 THE COURT: Thank you very much.

16 MR. RUSSO: Good afternoon, Your Honor.

17 THE COURT: Good afternoon.

18 MR. RUSSO: I want to first start and just say, you
19 know, that the scope of what has happened in Coffee County is
20 important to all of us. It is important to the State and all
21 of us standing up here.

22 The -- you know, as we know, every system is
23 vulnerable to an insider attack. What Mr. Cross has just
24 described, if true, is a crime, and it warrants prosecution.
25 But, you know, the access that these people had to the system

1 was they wanted access to show something and not necessarily
2 alter something from what we know. But that doesn't change the
3 fact that they had unauthorized access and that an
4 investigation is going on.

5 Your Honor asked about the claims in this case and
6 how Coffee County and the incident in Coffee County affects the
7 claims in this case. And, you know, Your Honor, the claims
8 originally in this case, as you may recall, involved the BMD QR
9 code and that, you know, humans couldn't read the QR code.

10 To date, we have yet -- there is yet to be any
11 evidence in this case of any voter who printed out their BMD
12 ballot and the names of the candidates printed on the ballot
13 were different than the candidates they punched in on the
14 screen.

15 We hear now -- and this, of course, has been shifting
16 to some degree over the years -- but regardless, you know,
17 individuals being able to trust and have confidence in the
18 system.

19 And, Your Honor, I think that we still maintain all
20 of our defenses regarding standing. I think that highlights
21 one of the problems with standing in this case for the
22 plaintiffs and that this is a generalized grievance.

23 Of course, none of the individual plaintiffs reside
24 in Coffee County. So to the extent this access to the
25 equipment in Coffee County is relied on for standing purposes,

1 it doesn't affect those individuals -- the individual
2 plaintiffs because they don't reside in Coffee County.

3 And, you know, the issues with regard to being able
4 to trust whether the machines are going to count the vote
5 accurately is an issue that would occur with hand-marked paper
6 ballots also.

7 As Mr. Cross correctly pointed out, the EMS and the
8 ICC in Coffee County was replaced. The scanners -- the access
9 to the scanners -- those would be the same scanners that would
10 be used for a hand-marked paper ballot.

11 The discovery that has been conducted around Coffee
12 County included videos of the former supervisor in Coffee
13 County showing various problems that she believed exists with
14 the hand-marked paper ballots, not BMDs. So there's that
15 issue.

16 THE COURT: I thought what -- that she was -- I don't
17 know which video you are talking about. But the one -- but I
18 thought at least the chairwoman's testimony before the
19 legislature dealt with, my understanding, still the functioning
20 of the scanning software as to -- in decoding the votes on the
21 absentee ballots.

22 MR. RUSSO: The video that I'm referring to is one
23 that was produced by Robert Sinners in his production. It
24 shows Ms. Hampton, who is the former election supervisor in
25 Coffee County, taking various hand-marked paper ballots and

1 scanning them through the system. That is the one --

2 THE COURT: That is the one you are talking about?

3 MR. RUSSO: Yes, ma'am. And at a broader level
4 though, the fact that the scanners were a part of the system
5 that they are pointing to as having been accessed, those are
6 the same scanners that would be used with what they -- the
7 relief they are seeking.

8 So, you know, at the end of the day, Your Honor, the
9 issues with the discovery around Coffee County need to be able
10 to demonstrate that there is a burden on the right to vote and
11 a severe burden on the right to vote.

12 The system -- it is a decentralized system. We know
13 that. We know -- it remains unclear how whatever access
14 occurred in Coffee County would be able to be spread across the
15 entire state.

16 The reference to Dr. Halderman and the amount of time
17 that he had I think is -- it is not that he was in a lab just
18 necessarily having free access to the equipment. It is the
19 ability to put that into action in an actual election and how
20 that would have to work given the system is so decentralized.

21 So at the end of the day, the claims in this case
22 are, you know, First and Fourteenth Amendment claims under
23 Anderson-Burdick. And a burden still has to be shown. And I
24 don't think that -- we don't think that what has -- the access
25 from Coffee County -- in Coffee County gets to the point of

1 showing any votes have been changed. There is, of course, a
2 criminal investigation going on. Access to -- changing out
3 equipment, that is still something I will tell you is in
4 discussion for the State and how they go about doing that and
5 working with Coffee County to do that. So that is still
6 ongoing. But the EMS has been changed out.

7 Now, Mr. Cross mentioned references to Sidney Powell
8 and Lin Wood are deeply offensive to them. And I understand
9 that. And, frankly, Your Honor, discovery around Coffee County
10 has shown that Ms. Marks had communications with Harry
11 MacDougald, who was the attorney -- one of the attorneys in the
12 Pearson case. Which, of course, as we know, the attorneys in
13 the Pearson case were also Lin Wood and Sidney Powell and an
14 attorney for an organization called Defending the Republic.
15 Those individuals were all involved in this Coffee County
16 incident. And so that is -- there is a connection there. It
17 is not just some made-up connection.

18 I'm going through my notes here. Your Honor, I'll
19 just -- I think I'll just end with this, unless you have
20 additional questions.

21 THE COURT: Let me just ask you just something to
22 clarify a few points.

23 So are you -- when you say this matter is under
24 criminal investigation, is that the GBI or is that what is
25 happening with the grand jury in Fulton County?

1 MR. RUSSO: I'm referring to GBI's investigation is
2 my understanding. So we're -- we represent the State in this
3 case. We obviously don't represent the State in regards to
4 their investigation. I'm not privy to all of those details.

5 I do know that Judge Duffey has indicated he would be
6 happy to speak with you if you would like to speak with him
7 about their investigation in an in camera conversation. And I
8 think as far as I know that offer still stands.

9 THE COURT: Okay. All right. Thank you very much.

10 MR. RUSSO: I was seeing if my colleagues had
11 anything else.

12 THE COURT: You are seeing if they had anything else
13 to pop in about.

14 MR. BELINFANTE: Your Honor, if I may say
15 something -- and it is -- Mr. Cross and I talked last night,
16 and I told him I would do this.

17 And I know we're not talking about the brief we filed
18 last night. But I want to say something on the record given
19 that it was on the record. There is one point in the brief --
20 and I think Mr. Russo has now explained it a little better --
21 where it refers to plaintiffs having communications with some
22 of the litigants in the Pearson case.

23 That is not both plaintiffs. That is not the Curling
24 plaintiffs. And that could have been worded a bit more
25 strictly. He and I talked about that. So -- and I told him I

1 would make that representation today before you.

2 THE COURT: Thank you.

3 MR. BROWN: Just first on this last point -- go
4 ahead.

5 MR. CROSS: Just to bring up on the last point, Your
6 Honor -- Mr. Brown may want to say something too. Let me hand
7 you the email they are talking about.

8 Could I hand this to you, Mr. Martin?

9 THE COURT: Thank you.

10 MR. CROSS: I do appreciate the State's clarification
11 on that. But we should be clear about what is happening here.
12 This is the email that they are referencing.

13 And if you look at the cover of it, it is the email
14 from Harry MacDougald to Robert Sinners, who is an employee in
15 the Secretary's office, where it just indicates that he has had
16 a call with Ms. Marks. And you can see what she is doing here
17 is basically trying to explain to him why what they are trying
18 to do doesn't work.

19 But the heading here is data file needed for vote
20 swapping/switching. And what the State said in their filing
21 last night -- they characterized Ms. Marks as consulting with
22 the people who breached the Coffee County elections office.

23 There is a call here. But here is what is not
24 mentioned and what we find particularly troubling, Your Honor.
25 If you turn to the second page of this email, you will see that

1 there is an email from Frank Strickland at Taylor English. He
2 appears throughout this entire thread sending multiple emails.
3 But in this one in particular, he writes to Robert Sinners, who
4 at the time was not an employee of the Secretary's office. I
5 should be clear about that. He came to the office in February
6 of 2021. And he says -- he endorses Harry MacDougald. I have
7 been friends and colleagues for 30 years.

8 THE COURT: I'm sorry. I'm not --

9 MR. CROSS: Sorry. If you look at the bottom of the
10 second page -- do you see the email from Frank Strickland
11 November 10 of 2020?

12 THE COURT: Note to Robert Sinners?

13 MR. CROSS: Yes.

14 THE COURT: Uh-huh (affirmative). Okay.

15 MR. CROSS: Yes. He goes on to write Mr. Sinners, I
16 hope you will take Harry's concept seriously. My opinion is
17 that it should be pursued to a logical conclusion. Harry needs
18 the granular data to accomplish that result.

19 And throughout this, this lawyer from the Taylor
20 English firm is trying to help these individuals find evidence
21 that they believe existed on swapping or switching votes.

22 So I don't think it is fair or accurate at all for
23 the State to say that Ms. Marks consulted with these
24 individuals in their effort to find data. That is not -- or
25 their effort to overturn the election or do anything improper.

1 That is not what Mr. MacDougald's email indicates.

2 But what it does indicate, quite troubling, is that
3 the same law firm that was before this Court in September of
4 2020 defending this system, the same law firm that has defended
5 this system now for two years since, was actively working with
6 individuals who were trying to overturn the election to claim
7 that it was stolen for Joe Biden because votes were swapped or
8 switched in Georgia with that system.

9 And let me be clear. We have shown -- see no
10 connection to the Robbins Firm on this. I want to be very
11 clear about that. It is only Taylor English.

12 But the State cannot have it both ways. The State
13 cannot come in a filing with this Court and say because Harry
14 MacDougald had a call with Ms. Marks where she tried to convey
15 to him that what they were doing was nonsense and call that
16 consultation and yet when the very same law firm that has been
17 tasked with defending the system is actively undermining it
18 that is consultation. And that is deeply troubling, Your
19 Honor.

20 The other just points I wanted to touch briefly on of
21 what was said, Your Honor, Mr. Russo said there is no evidence
22 that anything was altered in Coffee County. That may be true.
23 I don't know. We don't know everything they know because of
24 the investigative privilege. But there is also no evidence
25 moving in the other direction because no one has looked. And

1 that is troubling. There should be confidence that nothing was
2 altered.

3 The notion that no plaintiff resides in Coffee
4 County -- they try to say this isn't relevant to our case.
5 Again, I have already walked you through the way the Coffee
6 County breach can infect the broader system. I don't think I
7 need to say more on that. But it is not isolated to Coffee
8 County at all.

9 Briefly on the hand-marked paper ballots point, Your
10 Honor, Mr. Russo is absolutely right. Hand-marked paper
11 ballots, like any other voting system, have risks. But here is
12 the key point that they always overlook. To alter votes and
13 particularly to alter election outcomes with hand-marked paper
14 ballots is very difficult because you literally have to go
15 ballot by ballot. Right? You have to have an individual that
16 is going to mark a ballot to void that ballot, put a spare mark
17 on it or throw it out or replace ballots.

18 At most over a period of many, many hours and days,
19 one might be able to do that with a few hundred ballots. With
20 people like Doug Logan and Jeff Lenberg and whoever this
21 programmer was, Scott Hall, sitting in an election office for
22 two weeks, they can en masse alter votes statewide. Because it
23 just takes the injection of a piece of software to do that that
24 becomes almost impossible to detect, particularly in a very
25 close election like we saw in the Presidential election where

1 you don't need to change a lot of votes to switch the outcome.
2 And if you spread that out over a bunch of -- a lot of votes
3 across -- or a lot of voters across 159 counties, it becomes
4 almost impossible to detect, particularly when you don't have
5 an RLA.

6 And the last point I'll make, Your Honor, is this
7 notion that it is a decentralized system. Again, that is not
8 how it works. It is a very centralized system that moves up to
9 the state level, information moves back and forth, including
10 over the internet.

11 And I'll leave Your Honor with that.

12 THE COURT: Okay.

13 MR. RUSSO: Your Honor, if I could just briefly -- I
14 want to just start: Taylor English doesn't have a
15 representative here. I don't necessarily know that it is fair
16 to Taylor English to be attacking Frank Strickland in this --
17 for him to be attacked in this email without them having anyone
18 here.

19 But, you know, you look at the email. It is talking
20 about accessing server logs and server access. We don't know
21 what all communications Ms. Marks might have had with the
22 Pearson plaintiffs. We know Ms. Cathy Latham was one of the
23 plaintiffs in the Pearson case. But we don't know that.

24 What we know next is that she had a recorded phone
25 call with Scott Hall. That call appears to have -- the

1 recording started shortly after the call started. We don't
2 know what they said to each other when the call started, if
3 they had had prior communications or not.

4 I mean, that goes to one of the discovery issues
5 here. But Mr. -- at a larger level, Mr. Cross' statement that
6 they don't know if anything was altered is in and of itself a
7 concession that they do not know that there was any burden on
8 any voters.

9 THE COURT: Right. Well, the thing is though that is
10 why they are -- I'm going to just terminate one part of this.
11 I mean, I don't think it is going to be -- it is a very
12 fruitful thing to -- at this juncture for Ms. Marks to be
13 attacked or to -- or for Mr. Strickland to be attacked.

14 I mean, I think both of them are long-time voting
15 activists in their different ways and have a profound interest.
16 But I have no -- I'm just -- I just think we would waste less
17 time if we kind of could just strip ourselves of that.

18 It is not -- it is not helpful to me. I know that
19 you -- the State subpoenaed Ms. Marks. I don't know what has
20 happened with that and whether -- but that is my general view.

21 But then as to the -- not to say that there couldn't
22 be something critical that you go and pursue. But I think the
23 State had a lot of still potential information available to it
24 that apparently wasn't -- might not have been pursued. I don't
25 need to go further about that at this juncture.

1 But as to the question of, well, the plaintiffs
2 acknowledge that they don't know for sure whether anything was
3 modified or changed, I take it that is why they are saying that
4 they need to look at the -- have asked to look at these
5 servers. Because also the State hasn't said we have done a
6 thorough examination and we tested it and we tried to attack it
7 and see what -- either.

8 So, you know, it is a -- I understand what you are
9 saying that Coffee County has its own -- also has its own
10 database. But they are all integrated databases. So that is
11 the concern.

12 And this has obviously been a moving target all
13 summer also. The concerns about the -- how wide it is or how
14 profound it might be or not at all are just ones that everyone
15 has been -- it seems to me as far as I can tell, it has been a
16 moving target all summer.

17 MR. RUSSO: And, Your Honor, I would simply just
18 point out that we do know when the servers were accessed, we do
19 know when they were taken out of use by the State. There were
20 no elections held at that time in the intervening period. So
21 we do know that they were not -- servers were not used in an
22 election.

23 So from that standpoint, that is something we know at
24 this point. Regardless of whether some of these are more
25 discovery-related issues, I understand that.

1 THE COURT: Okay. I mean, obviously most of the
2 requests from the discovery still are from the plaintiffs.

3 Mr. Sterling's deposition has been postponed by
4 agreement; is that right?

5 MR. CROSS: Yes.

6 THE COURT: So are you -- have the parties agreed on
7 completion of the depositions that are in Paragraph 1 under
8 Roman Numeral II?

9 MR. BROWN: Your Honor, we have had some fruitful
10 discussions with the defendants' counsel on not only the
11 remaining discovery, which has already been launched, but also
12 we have told them the witnesses that we still have to subpoena.
13 And they haven't agreed that those are appropriate, but we have
14 disclosed why we want to take them and the limited nature of
15 that.

16 In terms of the mop-up, I think we're in agreement on
17 Gabe. We're getting a date for that. We haven't been able
18 to -- we have served but haven't been able to secure deposition
19 dates for Logan and Hampton and believe we'll be able to do
20 that in the next couple of weeks or so. I'm not sure. We have
21 a motion that we're filing -- have to file in Florida on Logan
22 because he hasn't produced documents.

23 And so in terms of the what I would call mop-up and
24 the way we presented it in the email to the Court was that we
25 wanted to inform the Court of what we needed to do but do not

1 necessarily believe that we need Your Honor to do anything with
2 respect to that.

3 In terms of the new discovery --

4 THE COURT: Well, on the mop-up ones, let me just ask
5 you this: I mean, just jumping to the defendants' request to
6 take the -- serve -- they had served a subpoena on Ms. Marks.
7 And I understand that the plaintiffs subsequently objected to
8 the subpoena and said that the defendants weren't authorized to
9 conduct discovery related to Coffee County. I mean, that
10 doesn't make sense to me.

11 MR. BROWN: That is not --

12 THE COURT: That is not your position?

13 MR. BROWN: That is not our position, Your Honor.
14 Our position -- and I think we've worked things out with
15 respect to Ms. Marks' subpoena.

16 Our objection was that they did a subpoena rather
17 than a Rule 34 request, which was improper right at the end of
18 discovery. So we had only five days to respond to what really
19 is a document request to the party. So we said that is not the
20 way to do it. That is wrong, and there are reams of cases.

21 THE COURT: Yes. I understand that.

22 MR. BROWN: You understand that. And so the response
23 from Mr. Tyson, as you would expect, very professional and
24 reasonable, said, okay, can we -- can we deem Ms. Marks within
25 the control of CGG and would CGG give these documents or some

1 portion of these documents as a supplementation of their prior
2 discovery responses. And I said sure.

3 And so -- and the key pieces here -- and some of this
4 is important information. We're not saying that it is not
5 relevant. One of the things that we have done throughout the
6 case is to share -- both sides have shared discovery that we
7 get from third parties with the other party, just as a matter
8 of course. And we have done that through all of this.

9 We also launch a lot of Open Records Act requests.
10 And one of the State's concerns was to make sure that the
11 responses to Open Records Act requests that our organization
12 got or our volunteers got was also shared with the State. And
13 we said sure, and we are going to produce that.

14 So I don't think -- we may have to work out some of
15 the details of the scope of the subpoena to Ms. Marks. And we
16 will sort of drill down on that. But we will make every effort
17 to resolve the State's concerns and give them a reasonable
18 response to that -- on that.

19 THE COURT: All right.

20 MR. BROWN: I don't know if you want me to address
21 this now. But in terms of new people that we want to subpoena,
22 we listed in the email two people. One was Jeffrey Lenberg,
23 and the other is Alex Cruce. And both of them are seen in the
24 video in Coffee County. And we did not see that video until
25 about a week ago.

1 And both of them are self-described computer
2 programmers. And we believe that they obviously have
3 discoverable information. So we would like to subpoena them.

4 In addition, we would like to subpoena a man by the
5 name of Ed Voyles.

6 THE COURT: Is he here? I don't remember seeing his
7 name.

8 MR. BROWN: He is in Coffee County. He was the
9 former chair of the Coffee County Board of Education -- I'm
10 sorry -- Board of Electors. He too was in the Coffee County
11 offices during the caper and we believe has discoverable
12 evidence.

13 And then finally we may need to subpoena the
14 testimony of a man named Robert Sinners. Mr. Sinners now works
15 for the Secretary of State but -- and has been there since
16 February of 2021. But before that, he worked for the Trump
17 campaign. And his phone number appears in some key -- in a key
18 text message during the actual theft of the Coffee County
19 equipment.

20 The two -- the text was sent from two people who have
21 pled the Fifth about why his phone number appears. So we would
22 like to talk to him directly. The State has -- the State
23 defendant has cooperated -- thank you -- and given us his
24 documents because he is now with the Secretary with the State.

25 So what the State I think, quite appropriately, did

1 is say we're going to represent Sinners from the moment he
2 joined the Secretary of State but before that he is on his own.

3 So we have actually got two document requests from
4 them. But it leads to other questions that we have that we
5 think a deposition would be appropriate.

6 THE COURT: And how long of a deposition?

7 MR. BROWN: Our depositions have been pretty tight.
8 I think each of the -- well, not sure about Lenberg and Cruce.
9 Sinners, I think, would be several hours.

10 THE COURT: So is your understanding that he was
11 working still for the Trump campaign or was he working for the
12 Secretary of State's office at the time the EMS server was
13 accessed?

14 MR. BROWN: He was working for the Trump campaign,
15 and he also was the coordinator of the fake or what are called
16 the fake elector group. And we know from his documents that he
17 was down in Coffee County.

18 He is also involved in the lawsuit that was -- odd
19 lawsuit that was filed against Coffee County by another fake
20 elector named Shawn Still, which is an unusual lawsuit, Your
21 Honor, in that it was filed in December against Coffee
22 County --

23 THE COURT: December of '21?

24 MR. BROWN: Of '20.

25 THE COURT: Of '20.

1 MR. BROWN: It was filed in December of '20. And it
2 was filed in Fulton County against Coffee County,
3 Raffensperger, et cetera. It alleges that -- makes a lot of
4 allegations that show a lot of information about internal
5 Coffee County information, which is suspicious. Sinners signed
6 the notary for that lawsuit. Shawn Still, the plaintiff in
7 that lawsuit, alleged in the lawsuit in a verified complaint
8 that he was a member of the Electoral College, not that he was
9 a nominee, not that he was a fake elector, but that he was in
10 the Electoral College, which, of course, is false. And he
11 swore that under oath.

12 Oddly -- we don't know why -- that lawsuit was
13 dismissed without prejudice unilaterally by the plaintiff the
14 same day that Sinners got the -- that Sinners' phone number
15 appears when Coffee County was -- so Coffee County gets raided
16 that same day they dropped their lawsuit. We don't know why.

17 THE COURT: Raided in December?

18 MR. BROWN: On the 7th of January.

19 THE COURT: On the 7th of January?

20 MR. BROWN: Right. Same day. So we think -- we
21 think in terms of whether it is discoverable is so plainly
22 discoverable that it may indeed lead to admissible evidence.
23 So that is why we would take those four, three of the people
24 who were there. The other was contacted by people who were
25 there.

1 And that would wrap up the depositions that we
2 haven't subpoenaed. The ones we have subpoenaed, we haven't
3 been able to tag.

4 Oh, I should add, Your Honor, that Cruce is important
5 because he was with Hall -- Scott Hall.

6 THE COURT: I can understand that one. All right.

7 MR. BROWN: Okay. That is what I have. If you have
8 any questions, I'm happy to answer them.

9 THE COURT: I mean, Shawn Still seems like, frankly,
10 a little more remote.

11 MR. BROWN: Yeah. Still -- Still is not on our list.

12 THE COURT: He is not on your list. This was an FYI?

13 MR. BROWN: Right. Sinners is. And because he --
14 the people who were there called him the day it happened right
15 as it was wrapping up. And we don't know why. And they won't
16 testify because they are taking the Fifth.

17 THE COURT: So you have not been able to serve who
18 that you indicated that you had been --

19 MR. BROWN: We haven't been able to serve Scott Hall.
20 He is a bail bondsman.

21 THE COURT: Right. I know who he is.

22 MR. BROWN: And then also Stefanie Lambert. Stefanie
23 Lambert is the lawyer for Misty Hampton or purportedly is the
24 lawyer for Misty Hampton. She engaged Cotton to look at the
25 Coffee County -- to do a forensic analysis of the Coffee County

1 software.

2 She is connected with many of the individuals
3 involved. She is in Michigan. We have been trying to serve
4 her for a couple of weeks now, I think. And she is stuck in
5 service. She won't come out of her house. And then we have
6 served Misty Hampton and Doug Logan, and we are still trying to
7 take -- trying to get them to appear for a deposition.

8 I think that is it for who we are still trying to
9 get.

10 THE COURT: So what is your thought if you can't -- I
11 mean, this could be -- end up -- it is another district, for
12 instance, obviously in Michigan or in another district.

13 I mean, how long are you thinking that you -- I'm
14 just trying to understand just practically speaking how long
15 you would be extending this process.

16 MR. BROWN: We have tried to be tactical in the way
17 we have gone after these witnesses. And we have used 30(b) (6)s
18 to great effect because it allows an organization to testify
19 without taking the Fifth. So that has been helpful.

20 And so we've tried to get the information at the
21 easiest source given the resource drain. With Lambert, I'm not
22 sure what we'll be able to do. We've got some leads on where
23 she is. Maybe we'll be able to tag her up there. And if we
24 do, we'll do a Zoom deposition. And if she doesn't comply,
25 we'll contact the court up there just like we're doing in

1 Florida with Logan.

2 THE COURT: Right. All I'm asking you is: How long
3 would you imagine this was going to be out there? I mean, I
4 don't know whether -- I mean, I'm not -- you're asking for an
5 extension for these purposes. And I guess I'm just trying to
6 understand what would be the -- I mean, if I grant it, then
7 there is still the question of how long.

8 MR. BROWN: Your Honor, this may come as a surprise
9 to you. But we want to get this done. And we want to try this
10 case. And we want to get these questions answered absolutely
11 soon as we can.

12 We think we can do this in three weeks, and we would
13 be comfortable with that limitation, recognizing that we have a
14 lot of mop-up to do. I think we can take Gabe Sterling's
15 deposition within that time period, which should be very
16 helpful.

17 We do need the State's -- although the file may be
18 thin, we would like the State's investigative files before we
19 take Gabe's deposition. But don't have to have it in advance
20 of that if that is a difficulty.

21 THE COURT: Mr. Belinfante is shaking his head. I
22 can give you some instant feedback since you don't have eyes in
23 the back of your head.

24 MR. BROWN: I think what Mr. Belinfante was referring
25 to is that it is a real fat investigative file that he is not

1 giving us, and I'm saying it is a real thin investigative file
2 because we don't see any traces of a real investigation.

3 THE COURT: All right. I can't -- that is beyond my
4 detective capacity between the two of you.

5 All right. So you are saying three weeks?

6 MR. BROWN: Yes.

7 THE COURT: All right. I'll separate -- we'll
8 separately discuss the EMS and the request as to access to data
9 or data systems.

10 MR. BROWN: Yes, Your Honor. The issue there is that
11 we all have copies of what Sullivan Strickler copied in Coffee
12 County. The State has the only copy of what they copied in
13 Coffee County. And so we -- our experts would like to have
14 access to make a comparison to the two to see if there are any
15 changes made.

16 THE COURT: I missed something. You-all have access
17 to what they looked at, but you don't -- but the State has
18 something more?

19 MR. BROWN: The State has the actual EMS server.

20 THE COURT: The EMS server from Coffee County?

21 MR. BROWN: From Coffee County that they picked up
22 several months after -- after Lenberg was in there fiddling
23 with it for five days or whatever.

24 I don't want to get into the substance again. But
25 that is crucially important to determine what was done after

1 the caper on January 7, to see what was done to it by Lenberg
2 or others.

3 It is not -- we think it could enhance our case if
4 there was something done to it. But analytically it is really
5 unnecessary because we have shown that the software is now in
6 the public domain -- virtually in the public domain. And so
7 whether or not the hackers actually did something to that
8 server doesn't stop the whole analysis that Mr. Cross went
9 through about Dr. Halderman's report and the Secretary's
10 response and the ability of who knows how people have, maybe
11 even working in concert, to develop new hacks to go into
12 Georgia's system.

13 And for the same reason, the fact that it came from
14 Coffee County is irrelevant. It can be -- any county in
15 Georgia can be hacked with the information that now the whole
16 world has that came from Coffee County.

17 And so we think it is actually to the State's
18 interest and to our interest and to their investigation to
19 allow our experts and their experts to compare those two and to
20 report to the Court as to if the existing EMS server that was
21 physically taken from Coffee County has any changes from it
22 between the time that it was copied.

23 THE COURT: All right.

24 MR. BROWN: Thank you, Your Honor.

25 MR. RUSSO: I'll try to be brief, Your Honor.

1 First, the first point is we have objected in the
2 past, of course, to this additional discovery around Coffee
3 County. And we want to maintain that objection. And it is the
4 fruit of Ms. Marks' recorded phone call, of course, that was
5 withheld in discovery.

6 I think that gets to a point regarding the subpoena
7 to Ms. Marks. And I don't know -- you know, we'll work with
8 Mr. Brown, of course, on that. Our concern has been, you know,
9 is she -- are documents being withheld because they are
10 claiming that they are hers in her personal capacity or are
11 documents, you know, also documents those of the Coalition for
12 Good Governance and therefore they would have been responsive
13 to past discovery requests.

14 As you may recall, we had had discovery requests at
15 one time about communications with Sidney Powell and the
16 individuals involved in the Pearson lawsuit. We know that
17 those individuals were, of course, tied to the Coffee County
18 issue. And the objections that the plaintiffs had to those
19 requests were upheld.

20 So when we deposed Ms. Marks in the 30(b)(6), we
21 were -- you know, they lodged objections. Mr. McGuire did.
22 And we were not able to ask those kinds of questions. So we
23 were kind of stuck in a situation where we don't know what is
24 hers individually, or is something being withheld for some
25 reason that we don't know? And therefore we felt like the

1 subpoena was the best way to cover our bases.

2 Regarding --

3 THE COURT: Let me just ask about that. Are you-all
4 going to -- I have to say I don't remember all of the details
5 of what was objected to or not. And these were also phone
6 calls. So it can slip through.

7 But is Ms. Marks or the Coalition objecting to
8 providing her communications with --

9 MR. BROWN: No, Your Honor. Your Honor, I may not --
10 there was a period of time where I couldn't work on the Coffee
11 County issue for totally unrelated issues. And I don't know --
12 I don't remember either. However, our current position is no,
13 we're not objecting.

14 THE COURT: You're going to give it to the State?

15 MR. BROWN: Yes, Your Honor.

16 MR. RUSSO: Moving on to the other issues, Your
17 Honor, access to the servers. I think everybody -- I think the
18 plaintiffs recognize and agree that the servers were swapped
19 out prior to any election. So I'm not quite sure what the --
20 how giving them access to those servers at this juncture
21 would -- what is the relevance of that to establishing their
22 claims since they were not used in any election after they had
23 been accessed.

24 That aside, you know -- and this goes into some of
25 the other points raised by Mr. Brown. You know, there, of

1 course, is a criminal investigation going on. And, you know,
2 we don't want this discovery to impede that investigation. We
3 have -- my understanding is that the servers have been turned
4 over to law enforcement.

5 So, you know, that is just one other consideration of
6 ours that we want to raise. Again, we're not involved in the
7 criminal investigation. But they are obviously relevant to it
8 since they are tied to unauthorized access to the State
9 equipment. So there's that.

10 With regard to the other individuals that they would
11 like to depose, you know, I don't want to get in a tit for tat.
12 I mean, I think a lot of these individuals -- they knew about
13 them previously. They were referenced in Tweets and other
14 communications that were produced in Coffee County discovery.

15 Your Honor, if you're inclined to extend discovery,
16 that is fine. We would just simply want to know what discovery
17 we're able to conduct in that extension since, you know, we
18 have got strings of emails where we were told that we weren't
19 allowed to conduct discovery. So that is --

20 THE COURT: Well, if I allow any more discovery, you
21 will have discovery too. It is not a one-way street.

22 MR. RUSSO: So I think that is really the only other
23 point I had is we just wanted to make sure we understood what
24 we could do and can't do.

25 THE COURT: Okay.

1 MR. CROSS: Your Honor, could I add a couple of quick
2 things?

3 THE COURT: Well, you can answer this question since
4 you work most directly with Mr. Halderman -- Dr. Halderman.

5 Without you -- are you seeking a copy of the server
6 and ICCs by the Secretary? Is there such a thing? Rather
7 than -- you're not looking for the original that has been
8 seized by the -- by the GBI, are you?

9 MR. CROSS: Literally what I wrote down to say to
10 you. We're looking for a forensic copy. So something that
11 would capture exactly as it appears on the ICC and the server
12 that the State took possession of. And then we would put that
13 in whatever secure way we need to keep it to let our expert do
14 their work.

15 THE COURT: So what would you -- I mean, it seemed
16 that it wasn't the most important thing, that it might -- what
17 are you hoping -- what are you thinking that it would reveal
18 that we should bother to do this -- spend the time for you to
19 do that?

20 MR. CROSS: Right. Again, let me just pick up for a
21 moment on what Mr. Brown said, which is in part the answer to
22 your question, which is I don't think we need this for our
23 claims. I think we need it only to respond to their defense.

24 Because we heard the defense again today that we
25 haven't shown that anything was altered. I don't think we have

1 to show that to prevail on our claims. That said, I do want
2 to -- I have an obligation to explore every reasonable avenue
3 to respond to that argument.

4 And so given we know the access individuals had and
5 the prospect that something was altered or something was added,
6 I think we need to look. And it may come back and everything
7 on that server may look exactly like it is supposed to except
8 for the indications of the breach that we know now are on that
9 server. Maybe that is all we find. I don't know.

10 But I think we have an obligation and a right given
11 their defense to be able to look at that and see when the
12 people went in did they alter any of the files. Did they add
13 anything to the files? Is there evidence, for example, of a
14 back door? You know, someone could have added a remote access.
15 Those are the types of things we would want to look for to be
16 able to respond to the argument that has been made.

17 Again, Your Honor, I don't think the State can have
18 it both ways to say we don't have evidence that something was
19 altered but not give us the ability to look at the equipment
20 that was taken to see what it looked like after those people
21 left.

22 That is the challenge with what Sullivan Strickler
23 gave us. It is very impactful to see everything Sullivan
24 Strickler was able to get and who they shared it with. But
25 what we would like to see is what did the equipment look like

1 after these people left. And that is what the State has in
2 their exclusive control and the county. The county does as
3 well.

4 Let me just hand this up too if I may, Your Honor.

5 Mr. Martin, if I may.

6 So these are the photos that were produced by
7 Sullivan Strickler. To Sullivan Strickler's credit, Your
8 Honor, they seem to have genuinely believed that they had all
9 the requisite permissions for what they did, which is somewhat
10 understandable. When they showed up, Misty Hampton -- the
11 elections office employees were there, a member of the current
12 board was there. Cathy Latham introduced herself as an
13 elections official, escorted them into the building.

14 So -- and they were acting under the direction of
15 attorneys who we all like to think are officers of the court.
16 So it does seem in fairness to Sullivan Strickler that they
17 generally believed they had the permissions to do what they
18 did.

19 Obviously they didn't because they couldn't get that
20 through the people who were involved. But they followed their
21 normal chain, chain of custody. They did everything as you
22 would expect to be done, including taking a lot of photos.

23 And what you have in these photos, Your Honor, are
24 all or at least most -- it may not be all. That is not
25 entirely clear -- but where they go through the many

1 differences of devices and equipment, compact flash, thumb
2 drives, individual computers, laptops.

3 And they tag each one, they indicate what is on it.

4 It has a number associated with it. And they documented
5 everything that they did. So you can really see the
6 extraordinary scope of what all they copied. It wasn't just
7 the EMS server or the ICC.

8 And everything you see there except for the EMS
9 server and the ICC continues to be used in whatever elections
10 are happening in Coffee County since January of 2021.

11 And to that point, Your Honor, again taking the EMS
12 server and the ICC doesn't really solve the problem. If you
13 walk into a roomful of people and one person in that room has a
14 virus, taking patient zero out of the room hours or days after
15 he has been there doesn't mean no one else got infected in the
16 same time frame. And that is our concern on what is left.

17 What I did want to touch on though just very briefly,
18 Your Honor, is the discovery issues -- the EMS server piece. I
19 think I answered your question.

20 On the 30(b) (6) and on Sinners, one point we raised
21 with the State this morning -- they have not had an opportunity
22 to react to this. But just to let Your Honor know how we are
23 trying get at this in an efficient way, because Mr. Sinners is
24 an employee in the Secretary's office and has been since
25 February of last year, to the extent he has any knowledge about

1 the events of Coffee County -- and, again, Eric Chaney who is
2 on the board text Mr. Sinners' number to Misty Hampton the
3 night when they are finishing up. I don't know why that is
4 because Mr. Chaney pled the Fifth and Ms. Hampton has not
5 appeared yet for a deposition.

6 But there is that and other connections as to why we
7 want to get his information. One way is to depose him. The
8 other is because he is an employee of the State in a relatively
9 senior position -- he is now communications director -- our
10 position would be that the State has an obligation to educate
11 their witness on what Mr. Sinners knows about those events, if
12 anything, because he is an employee. So he is within the
13 institutional knowledge of the State.

14 Again, just raised this this morning. I'm not asking
15 them to take any position on that. They obviously need to
16 think about that.

17 But our hope is that we will come to an agreement on
18 that. And that may obviate the need to sit down with
19 Mr. Sinners in particular.

20 The other part of that is, as Mr. Brown mentioned,
21 because there is no Fifth Amendment invocation with a 30(b) (6),
22 that would let us get to whatever knowledge Mr. Sinners might
23 have without putting him in the position of having to assert
24 the Fifth, assuming he would need to. He may not. I don't
25 know because I don't know what he has to say.

1 The last thing I just wanted to hand up, Your Honor,
2 because I referenced it and so Your Honor has it --

3 May I approach, Mr. Martin?

4 This is the email exchange that I mentioned from May
5 of 2021 where Mr. Barnes alerts the State. The only reason I
6 come back to this, Your Honor, is because I get where the State
7 is coming from when they say that the call between Ms. Marks
8 and Mr. Hall did not come out earlier. Fair enough.

9 But what they extrapolate from that is to say that
10 they were surprised. And I don't think that that is a fair
11 claim when they got this in May of 2021.

12 Here is the point I will leave you with before I sit
13 down, Your Honor. In May of 2021, three of the most senior
14 officials responsible for elections in the State, the elections
15 director, the head of the investigative department, and the
16 head of CES, are all on notice that Cyber Ninjas may have
17 breached Coffee County. They may have gotten access to
18 equipment.

19 And to their credit, they call for an investigation.
20 There is no evidence it ever went anywhere. And it would have
21 to be a very senior person in the Secretary of State's office
22 for that not to go anywhere, I would have to think.

23 And so it is not well taken when they suggest that we
24 surprised them because Ms. Marks didn't produce a call earlier
25 when they had this and we have long wanted to know what

1 happened with it. We don't have an answer.

2 Thank you, Your Honor.

3 THE COURT: Let me just move on for a moment. There
4 were some other items that we haven't talked about.

5 What is the story? Have you been able to resolve the
6 question of the designation of Mr. Maggio's documents?

7 MR. CROSS: We have not, Your Honor.

8 MR. RUSSO: I'm happy to take that.

9 We have not resolved that issue. I mean, the
10 documents are marked confidential under the protective order.
11 The protective order allows the parties to mark third-party
12 productions as confidential.

13 I think, you know -- and disclosing the Coffee County
14 server also may be somewhat related to this. You know, the
15 production at issue that was marked confidential was provided
16 to the media prior to being provided to us. We didn't have the
17 opportunity to mark it confidential prior to that being
18 disclosed or at least a portion of it. And I don't think --
19 I'm not saying it was all disclosed, but I think like some
20 pages.

21 And, you know, to the extent that the Coffee County
22 server is -- we're still not -- we still don't think it is
23 relevant given that it was never used in an election after
24 being accessed, we would suggest that it should be attorneys'
25 eyes only if it was to be produced.

1 THE COURT: The server? Is that what you are saying
2 or the --

3 MR. RUSSO: That -- yeah. I'm simply saying the
4 server that they have now asked for.

5 THE COURT: All right.

6 MR. RUSSO: We don't think it should be produced.
7 But if Your Honor is going to order that, we just want to make
8 sure there are some protections around it, given that it is the
9 subject of a law enforcement investigation also.

10 THE COURT: All right.

11 MR. RUSSO: You know, regarding the confidentiality
12 of the documents, I don't know that they are not able to use
13 those documents under the protective order with respect to
14 witnesses in depositions, quite honestly. But I will let Mr.
15 Cross explain their position.

16 MR. CROSS: Your Honor, on the EMS server and the
17 ICC, certainly we would agree to whatever reasonable
18 accommodations need to be made. We absolutely agree that there
19 is sensitive software, if nothing else, on there.

20 We also suspect, Your Honor, because of our
21 understanding the way the Poll Pads work that there may be PII
22 for all 7 million voters. Because one of the things that they
23 also copied was all of the Poll Pads. And the State may have
24 more -- better information. But my understanding is that each
25 of the Poll Pads has on it a copy of the full pollbook, which

1 includes voter registration information and certain PII.

2 We have not -- we have been very careful with that
3 hard drive because we don't want to stumble into that. But we
4 think that what was also loaded to that ShareFile site and
5 downloaded and distributed may include PII for the full set of
6 voters across the State.

7 And so we are not challenging the confidentiality
8 designation if applied to certain things like that. Right?
9 The Dominion software, fair. If there is PII, fair.

10 But what they have designated because they did it in
11 an en masse designation is things like the emails that I have
12 handed up, third-party emails.

13 So one of the emails that we can hand you is where
14 you actually see Sullivan Strickler and Doug Logan and Scott
15 Hall and Sidney Powell and the others -- Stefanie Lambert --
16 sort of working their way up to the breach on January 7.

17 There is no basis to designate that confidential from
18 the State. Those are entirely third parties. The individuals
19 involved in that designated confidential. They have designated
20 the CISA -- let me hand that up, Your Honor.

21 If you flip through that, Your Honor, I certainly can
22 see how that is embarrassing to anyone who is tasked with
23 securing the system. But the protective order has a very
24 particular standard. And it has to be, you know, like a
25 commercial sensitivity or some sort of sensitivity that goes

1 beyond just we don't really like what it says and the light
2 that it casts us in.

3 None of the individuals, including Sullivan
4 Strickler, who are involved in that email designated as
5 confidential. And I don't think the State has any basis for
6 standing to do so. And that is true for everything else in the
7 production. The photos, for example, we handed up. I don't
8 see any reason why the State can designate those confidential.
9 And some of the press already have a lot of that.

10 They have designated the CISA advisory confidential
11 in their own production. They have designated correspondence
12 from concerned voters and candidates with the SEB that is
13 publicly available confidential.

14 In the Sinners production, they have designated -- or
15 Mr. Sinners or through the State has designated text messages
16 and other things that don't have any confidentiality about
17 them. And it hamstrings our ability to use that because we can
18 only show confidential information to certain people.

19 And I will say, Your Honor, that we --

20 THE COURT: I thought I heard Mr. Russo say they
21 don't object to your showing them to witnesses.

22 MR. CROSS: To witnesses, right. We can show it in a
23 deposition. But if someone decides to cooperate with us --
24 right? Let's imagine that we could get someone like Doug Logan
25 or Misty Hampton or someone to sit down with us. As I read the

1 protective order, we have no ability to show them any of that
2 because we're not in a deposition. But we should be able to do
3 that.

4 The other point, Your Honor, I will say is we very
5 much believe that there is an incredibly important public
6 interest in this case. And part of what is important --
7 particularly because if the State is not going to make any kind
8 of switch to the system that we think is needed, it becomes all
9 the more important for voters to be educated so that they, for
10 example, can exercise their right to vote by hand-marked paper
11 ballot. It doesn't resolve the issue. But it may be a little
12 better than voting at the precinct on the BMDs.

13 So we don't think it is appropriate for a designation
14 to come in which seems intended to keep us out of the press
15 because it doesn't really serve any other purpose. If our
16 experts, our clients, third-party witnesses can look at it, the
17 only ones who can't are the public and the press. And that is
18 not at all what the protective order is intended to do.

19 If we can share it with all these other individuals,
20 then we should be able to share it with anyone who has
21 legitimate interest. And we think that is true for the press
22 and for the public, Your Honor.

23 MR. RUSSO: Your Honor, I'm going to let Mr. Miller
24 address some of this since he was involved in it. But, you
25 know, he will address the confidential provision and the

1 protective order, which I think -- and outside of letting
2 anybody just have access to it does address whether they wanted
3 to show it to somebody who is copied on the email recipient.

4 MR. MILLER: Thank you, Your Honor. I'll be very
5 brief here. But I do just want to make sure the Court is
6 cognizant of the course of proceedings that led to the
7 designation of this production as confidential.

8 On Monday morning probably about three or four weeks
9 ago, we received calls from our clients regarding press
10 inquiries they were getting specific to specific items that are
11 alleged to have been imaged and looked through and so forth.

12 Frankly, we had no idea what the impetus of it was
13 until about five minutes later which landed in our in-box was
14 the production of subpoenaed documents from Mr. Maggio. At
15 that point, we simply were trying to both get our hands around
16 what exactly was produced while at the same time trying to
17 protect against what we have been referring to throughout here
18 of the ongoing criminal investigation and disclosures that will
19 be made to witnesses that, you know, not only just related to
20 the criminal investigation but that are going to come up and,
21 frankly, interfere or dilute the testimony of witnesses that
22 are going to come up in this case.

23 Nonetheless, that is the process that led to the
24 designation of these documents. At the same time, what we
25 explicitly stated in the designation of the documents is that

1 we are marking them confidential so as not to preclude their
2 ability to use them or for their clients to access them. We
3 were explicitly providing that you can use these in a
4 deposition as you would like going forward. And we
5 subsequently -- my colleague followed up and said what can we
6 do to make sure this doesn't happen moving forward.

7 And the point was not that there can be no public
8 discussion of this litigation. There has been plenty of public
9 discussion of this litigation. But such that we receive the
10 documents before a call is made to try and get some reporter to
11 write a news story about it. It is a newsworthy story.

12 But, Your Honor, that is the process that led to
13 this. And at this juncture, there is nothing impeding the
14 ability to use these documents going forward, which says you
15 can use them for a deposition. In fact, the example as to
16 Mr. Logan, we received an email from counsel asking can we show
17 Mr. Logan one of these documents that has been marked
18 confidential because we think we might be able to talk him into
19 cooperating for a deposition. We said, sure, go ahead.

20 I presume they did so. We asked them to copy us to
21 the email. That didn't happen. But I presume it -- we
22 received it after -- you forwarded it to us, afterward. Yeah.
23 You wouldn't copy us.

24 MR. BROWN: You received it.

25 MR. MILLER: You forwarded it to us. So that is what

1 this whole process has been. You know, I'm not going to go
2 into the whole back-and-forth over the State would be
3 embarrassed over this Sidney Powell stuff.

4 You know, Your Honor, two points that I just have to
5 make real quickly is: In November and December of 2020, I
6 spent my Thanksgiving and Christmas defending against Sidney
7 Powell and Lin Wood.

8 Likewise, with respect to every single document we
9 have ever received in this case from the Curling plaintiffs,
10 all of them have been designated attorneys' eyes only. We
11 haven't caused a fuss. At the end of the day, discovery is for
12 litigation. It is for advancing the ball forward. And if we
13 get to the point to use it in court, we will address those
14 items as well.

15 I'm not here to go tit for tat on that. But that is
16 the context in which this is all occurring.

17 THE COURT: Thank you.

18 MR. MILLER: Thank you.

19 THE COURT: I just want to go back for a moment to
20 understand what is up on the cloud and that somebody else could
21 access at this juncture or that whether -- I mean, whatever
22 happened in Coffee County appears remarkable. But I mean, it
23 is still the question of its impact on your claims. And voters
24 here are not from Coffee County.

25 I understand this is not an isolated system though.

1 So I'm trying to understand what exactly again is up on the
2 cloud that somebody else could grab that it would be -- that
3 is -- or otherwise that is sort of -- that you believe is
4 transformative of your position as to the challenge of your
5 standing.

6 MR. CROSS: Yes, Your Honor. The cloud as we
7 understand from the 30(b) (6) that we got from Sullivan
8 Strickler has been taken down. They shut the ShareFile site
9 down they thought sometime last year maybe in the late summer.
10 So --

11 THE COURT: Of '21?

12 MR. CROSS: Of '21, yes, Your Honor. So the Dominion
13 software and whatever data -- additional voting data they got
14 sat up on that cloud from January until sometime in the late
15 summer.

16 THE COURT: So that had the Dominion software on it?

17 MR. CROSS: Yes.

18 THE COURT: I just wanted to confirm that. Okay.

19 MR. CROSS: Exactly. Dominion software from the
20 server, Dominion software from the tabulators, the scanners.
21 We understand it also had the Dominion software from the BMD at
22 least from a thumb drive. Because one of the pictures you have
23 there is labeled ICX install. The ICX is the term Dominion
24 uses for the BMD. The install, as we understand it, would be
25 the operating software -- the Dominion software for the BMD.

1 It is -- they may have had some trouble imaging the
2 BMDs themselves. But the software would sit on that thumb
3 drive from what we understand.

4 To your question, Your Honor, about standing, you
5 know, even before we heard about Coffee County -- and we have
6 talked about this before. I mean, we can only read so much
7 into an oral argument. We don't have a decision from the
8 Eleventh Circuit.

9 But it certainly sounded like there was no real
10 concern of standing in this case for the plaintiffs with the
11 Eleventh Circuit panel.

12 THE COURT: Right. I mean, I have heard that before.
13 I'm asking you about how this evidence -- what this whole
14 development affects you.

15 MR. CROSS: I see. Again, Your Honor, because
16 what -- it shows two things. One is it shows that there has
17 already been an intrusion into the system that may very well
18 cause the system not to work as it should going forward in
19 future elections. And that would not be limited to Coffee
20 County for the reasons I have already given.

21 But it also shows, Your Honor, that the security
22 system, which again we submit is really the only defense that
23 the State has at this point in this case to the vulnerabilities
24 Dr. Halderman and CISA have identified -- it just doesn't work.
25 Right? Because -- and that is, I think, really the most

1 important takeaway from this.

2 Let's put aside -- let's just assume for the sake of
3 argument that all these people did was copy a bunch of stuff
4 and they didn't do anything that would have caused the system
5 to work wrong going forward. Let's assume best case scenario.
6 That doesn't affect our claims. Because what the State is
7 saying is yes, we have a voting software system that has lots
8 of very serious vulnerabilities. Those vulnerabilities could
9 be exploited in a number of different ways.

10 But our defense of the State is no one could ever
11 exploit them because you have to have physical access to the
12 equipment. And what we now know is that is not hard to get.
13 Not only is it not hard to get, it is not hard to get in spades
14 at a level no one I think ever would have predicted.

15 THE COURT: So going back to the State's former
16 expert witness in an earlier proceeding from Pennsylvania whose
17 name is --

18 MR. CROSS: Michael Shamos.

19 MR. RUSSO: Shamos.

20 THE COURT: Thank you. I mean, he would say that is
21 as old as an election system, that you could pick up the boxes.

22 MR. CROSS: Right. And here is why that is
23 important. This is where I think there has always been a
24 little bit of sort of ships passing in the night between us and
25 the State.

1 Today Mr. Russo says hand-marked paper ballots have a
2 problem. Dr. Shamos said that. Although Dr. Shamos did say
3 don't use QR codes. So he was in agreement with us on that.

4 The point is this -- and it is the point I made
5 before -- one of the reasons hand-marked paper ballots are
6 secure --

7 THE COURT: All right. I'm not interested in why --

8 MR. CROSS: Well, that is how this connects to our
9 standing. I don't want to just repeat myself. But the way
10 this connects to the standing is: If you can't secure the
11 system against access, then what you need to do is mitigate the
12 mischief someone can make. Right? The mischief one can make
13 with hand-marked paper ballots happens on a fractional scale of
14 what you can on a BMD system for the reasons I talked about
15 before because you can't manipulate the ballot en masse.

16 THE COURT: Okay. Well, I get that. And so you are
17 saying you can't manipulate the ballot. You can't manipulate
18 the QR code because there is no QR code, et cetera. And I do
19 understand that.

20 But that is -- one would say -- that is a -- may be a
21 policy issue, a larger systems issue.

22 Does it in some way in terms of your individual
23 clients --

24 MR. CROSS: Yes.

25 THE COURT: -- have an impact? That is what I'm

1 asking.

2 MR. CROSS: Yes.

3 THE COURT: How does this in any way maybe build your
4 case about that in your mind?

5 MR. CROSS: Because the supreme court has made clear
6 that the right -- the constitutional right to vote is not just
7 to cast your vote. It is to have your vote counted the way it
8 is intended.

9 Necessarily implicit in that is that voters have to
10 have confidence -- reasonable confidence -- right? -- that that
11 will happen the moment they walk away. We are all agreed on
12 that. Their own witnesses have testified that voter confidence
13 is really, really critically important.

14 But you can't have that in this environment with this
15 system. And that is where the injury comes on an
16 individualized level. Right? Every voter who votes on this
17 system knowing what we now know about it --

18 THE COURT: But isn't that every voter --

19 MR. CROSS: No. Because --

20 THE COURT: -- then and therefore is a generalized
21 harm?

22 MR. CROSS: No. Because the harm is individualized
23 to each voter. Right? This is *Spokeo*. Right? The supreme
24 court in *Spokeo* makes clear in a footnote that just because
25 many different people may suffer the same harm -- think of mass

1 torts. Right? Mass torts, everybody suffers a lot of the same
2 harm.

3 My work, antitrust cases, everybody gets overcharged.
4 They all suffer the same harm. But they all still have
5 standing individually to sue. Because even though they are all
6 suffering the same or similar harm, the way it impacts them is
7 individualized. And that is what the standard is.

8 It is not what the State says, well, if everyone
9 suffers the same or similar harm coming out of the same set of
10 events, you have no standing. If that were the standard, you
11 would vitiate a whole lot of types of actions, especially civil
12 rights actions. They would be gone.

13 And the supreme court time and again has said that is
14 not what we're talking about. Again, you can look at *Clapper*
15 like we have talked about before. *Clapper* is very clear. It
16 is our case. Because what it says is in *Clapper* that if those
17 people could show that they had sort of -- the CIA had actually
18 been listening to their calls individually. Well, they would
19 have standing. But it was all speculative about whether they
20 might be. Right? That was what *Clapper* turned on.

21 *Clapper* didn't say, well, even if they were listening
22 to their calls, they would all have to suffer the same harm.
23 The Court actually says, if you can show that, then you have
24 standing.

25 So it is not what they are saying. And it is hard to

1 imagine any more individualized harm at a democracy level than
2 taking away the right to vote or rendering it illusory where
3 voters walk away and they don't know.

4 THE COURT: All right. I think --

5 MR. RUSSO: Your Honor, would you like for us to
6 respond to that?

7 THE COURT: If you want to, you are welcome to.

8 MR. RUSSO: Sure. I'll be quick.

9 In regards to the cloud, my understanding from the
10 30(b) (6) deposition was that the cloud was password protected.
11 Now, I'm sure Mr. Cross will say somebody could have downloaded
12 it from the cloud and then done something with it. Of course,
13 we would know if somebody downloaded it from the cloud based on
14 the logs.

15 But putting that aside, the plaintiffs' own expert or
16 consultant, Susan Greenhalgh -- she stated publicly that
17 Colorado's Dominion system, which is the same Dominion system,
18 was made publicly available in 2021. So the fact that
19 something -- that a system is necessarily out there, I don't
20 know that that wins the day for the plaintiffs.

21 I mean, the burden of proof to show that the burden
22 on the right to vote is severe and outweighed by the State's
23 interest, of course, is on the plaintiffs.

24 Mr. Cross has referred to this mass torts scenario
25 which the individuals who are injured in a mass tort have all

1 actually experienced an injury. That is the difference. Here,
2 the harm that Mr. Cross has stated is having reasonable
3 confidence. And I don't even know what exactly that means.
4 But he said some reasonable confidence that their vote is
5 counted. And that applies to everybody.

6 So the issue of the generalized grievances is not
7 solved by pointing to other areas of law where multiple people
8 are injured and standing does exist.

9 So I'll leave it at that, unless you have questions
10 for me.

11 THE COURT: No.

12 I just would -- Mr. Cross, was the -- when Mr. Russo
13 indicates that your colleague had testified or referenced that
14 the Dominion system was made publicly available in 2021, what
15 did that mean? Do you know?

16 MR. CROSS: That is for Bruce.

17 MR. BROWN: Yeah. Your Honor, it is very
18 significant. Colorado uses hand-marked paper ballots. They
19 have BMDs only for accessibility.

20 THE COURT: Right.

21 MR. BROWN: So the implications of that is why we are
22 seeking the relief in this case.

23 THE COURT: All right. I just was asking about the
24 cloud.

25 MR. BROWN: Right. And the significance of the

1 cloud -- of the -- it is very fair to say that in any realistic
2 way the Dominion software that Georgia uses in every county is
3 in the public domain. It is -- it has been copied by a number
4 of people with no restrictions on how they can copy it.

5 So although it was only on the cloud in a ShareFile
6 site for six months, it is unreasonable to assume anything
7 other than anybody who wanted to get their hands on it could
8 get their hands on it.

9 THE COURT: Right. I understand that that is what
10 you believe the evidence will show. I'm just asking about --
11 Mr. Russo indicated that a colleague of -- whose name I
12 recognize -- but Susan --

13 MR. BROWN: Greenhalgh.

14 THE COURT: Greenhalgh -- that she indicated that the
15 Dominion system from Colorado had been officially posted on the
16 -- is that so? And what did that mean?

17 MR. BROWN: I understand that it was downloaded from
18 Mike Lindell's forum.

19 THE COURT: Oh, I see. It was not officially posted
20 through the Secretary of State's office?

21 MR. BROWN: That's correct.

22 THE COURT: I've got it.

23 MR. RUSSO: I didn't mean the Secretary of State's
24 office had made it public. I'm happy to provide the public
25 article that she wrote that links to this, if Your Honor would

1 like it.

2 THE COURT: All right. Thank you. That would be
3 great. You can provide it to us at the conclusion.

4 All right. Well, it sounds like you have some plans
5 for moving forward. I would like to think a little bit about
6 this. But you can obviously proceed with anything -- any
7 depositions that have been noticed. And you have a plan for
8 going forward as to the documents of -- Ms. Marks' document --
9 the subpoena for her documents.

10 And I will issue something by the end of the day
11 basically giving you -- as to the rest of the matters before
12 me. I don't want to have you hanging out while I'm trying to
13 parse out what you have all said.

14 MR. CROSS: Your Honor, I think the one thing that we
15 need help from you with in the short term is resolving the
16 investigative privilege issue. Because as I understand it from
17 the State, as things stand, when we go in to Mr. Sterling's
18 30(b) (6) deposition, they have let us know that there will
19 likely be a lot of instructions not to answer.

20 We obviously have a disagreement in scope. And the
21 situation has evolved. When we were briefing this before, we
22 did not have evidence in our view of an investigation. There
23 now is. There is no dispute about it. The GBI has begun an
24 investigation.

25 So there is some scope that likely is appropriate.

1 We still submit -- and I'm not -- I would rather Your Honor
2 just rule on the papers than us take the time to file a reply.

3 What I will just say briefly in response to their
4 opposition is it still doesn't meet the standard. We walked
5 the Court through very specific factors that the courts have
6 said must be satisfied if you are going to invoke the
7 investigative privilege. They do not address those factors.
8 One of which is it has to come from the Secretary himself or
9 from Judge Duffey. And all they have is a declaration from
10 Ryan Germany. And then we go through the other factors. I
11 won't repeat it. But those arguments have not been refuted.

12 To net it out practically, I think Your Honor is in
13 the unenviable position of trying to figure out where the line
14 is. I think they are drawing the line far too broad because
15 they are sweeping in all facts.

16 We are not interested in their investigative
17 procedures, the sort of things like people undercover or how
18 they are analyzing certain things. If they had a consultant to
19 come in and look at the EMS server and engage in certain
20 methods, we're not interested in any of that.

21 What we do want are the facts. What have they found?
22 What have they pursued? And the facts of the investigation
23 because we do think an important issue here is what did they
24 investigate when. For example, what sat behind Mr. Sterling's
25 report in April that the State had concluded the breach did not

1 happen?

2 So we do need at Your Honor's earliest opportunity
3 before that deposition guidance.

4 THE COURT: When is the deposition? You haven't
5 scheduled the deposition?

6 MR. CROSS: They are going to offer us dates for the
7 week after next. So we are -- sorry. It is a tight timeline.
8 But sometime in the next couple of weeks.

9 We could probably put that off a little bit if Your
10 Honor needs a little more time. There is not urgency to it.
11 We would like to get it done sooner than later. But more
12 important is giving Your Honor time to resolve that.

13 THE COURT: So Mr. Russo or your colleagues, what
14 is -- why would information concerning why Mr. Sterling had no
15 knowledge of the investigation or said he had no knowledge or
16 what he knew back -- when the last deposition was taken -- why
17 would that be privileged?

18 MR. BELINFANTE: I think there are certain ones --
19 and we said in our brief -- and I'll read it from Docket 1444.
20 It looks like Page 3. Questions about the existence of timing
21 of investigations as opposed to sources and methods are not
22 subject to a claim of investigative privilege.

23 So some of those questions we won't do or we would
24 not object to. What we have said is -- and I think
25 unfortunately this is why it is tough to make a blanket rule or

1 a blanket ruling at this point. Because each question is going
2 to necessarily call in different factors.

3 So, for example, when Mr. Cross talks about it comes
4 from the Secretary of State or the SEB, right now -- and they
5 have been separate entities. But right now, they are even more
6 separate entities. The Secretary is no longer chair of the SEB
7 and all of those kind of things. So there are different pieces
8 there.

9 Also in some ways -- and I think Mr. Russo spoke to
10 this -- we're also in a little bit of a bind because we don't
11 know what all the GBI is doing as civil counsel in this case.
12 We don't know a lot of what is there.

13 And so to the extent that the 30(b) (6) witness is
14 supposed to be charged with knowing what law enforcement is
15 doing, they may not. And to the extent that they do know what
16 law enforcement is doing, well, that would certainly we think
17 fall within the investigative privilege.

18 And so -- but I think that the real challenge here is
19 trying to determine here and now which questions will violate
20 and which will not. I mean, I think we have sat out some of
21 that information in our brief. But really it seems to be a
22 case by case basis or question by question, I should say.

23 THE COURT: Okay.

24 MR. CROSS: Your Honor, if the State's position is
25 that sources and methods are off-limits, speaking for myself --

1 Mr. Brown can say if he disagrees -- I think that is fine. I
2 don't think we're asking -- source is a little bit harder maybe
3 because that gets into facts.

4 You know, we certainly want the names of people who
5 are involved in things. But we don't need to get to the level
6 of this investigator spoke to this source and that is how they
7 learned this. Or this investigator undertook this method.
8 Whether it is following someone or looking at a phone, we don't
9 need that.

10 So maybe we're not as far apart as it seemed on the
11 brief. It is just the facts. Right? We want to be able to
12 say tell us essentially what do you know about the breach in
13 Coffee County. Just walk us through the facts of what
14 occurred.

15 THE COURT: The sequence of time.

16 MR. CROSS: Right. Tell us what you did. Not the
17 methods of investigation. But when did you initiate an
18 investigation? How did that investigation proceed? Who was
19 involved? Who knew what? If you reached a conclusion, as it
20 sounds like, how did you reach that conclusion and why?

21 Just factual level. And maybe there is not as much
22 of a gap if their real concern is sort of the investigative
23 sources and methods. We acknowledge depending on the scope of
24 that that generally would be investigative privilege.

25 MR. BELINFANTE: And I think this is just proving the

1 point that it is a question by question analysis, Number 1.
2 But I would have to say -- and I realize relevance is not much
3 of an objection in a deposition.

4 But, you know, let's say that the investigation
5 started April 1. Let's say it started September, you know, 5.
6 What relevance is that to where we are in terms of the claims
7 that are there and the harm to the right to vote?

8 So I'm really not sure where all of this is going in
9 the first place. And so -- and given what Mr. Miller talked
10 about in terms of, you know, us getting press inquiries before
11 we see documents, it heightens our concern about the
12 investigation.

13 I mean, we have been told for months, you are not
14 investigating. We're not in a position to comment on much of
15 any of it. And so we're concerned of the nature of the
16 questions.

17 And so that is why we took a very strong position on
18 the investigative privilege. But I do think to Mr. Cross'
19 point we're not objecting to a lot of the questions that are
20 there, other than relevance, which I realize is not going to be
21 something that we'll instruct the witness not to answer on.

22 THE COURT: Well, would it be worthwhile for you to
23 spend a little more time talking with each other about how
24 you -- given the fact there is some overlap in your -- and some
25 possibility of narrowing what the problems are, you might be

1 able to do that. And then if we pick a date for the deposition
2 when I know I'm available, then at the -- you know, you can
3 take a break at some point and we could then go over in the
4 deposition those matters.

5 MR. BELINFANTE: I think that is a great idea.

6 MR. CROSS: Yes.

7 THE COURT: It sounds like you could narrow a lot
8 yourselves. And then what you are worried about is, you know,
9 what do you do -- you don't really want to litigate the whole
10 thing again and go on and on.

11 So I will tell you I'm kind of absolutely creamed
12 through the end of September. So if the trial that I'm worried
13 about in the first of October doesn't materialize, it will be
14 easier.

15 But if you do it, we can try to -- if time is not of
16 the essence in terms of doing this in the next two weeks, then
17 I could make myself available.

18 MR. BELINFANTE: Your Honor, it sounds like -- and I
19 may suggest this, just thinking out loud: While they have got
20 other depositions to do, we were trying to offer Mr. Sterling
21 because it was being made up because of a death he had in the
22 family.

23 THE COURT: Right.

24 MR. BELINFANTE: If they want to do the other
25 depositions and then we can do Mr. Sterling to accommodate the

1 Court's schedule, we could all certainly be in touch. We can
2 certainly talk about that. But that may be --

3 THE COURT: Why don't you-all just, you know, talk
4 some more between yourselves about this. If you need -- I
5 mean, I obviously have sort of held back on dealing with this
6 because it is -- it is messy and I don't know all the evidence.

7 But if you can come to some general contours and you
8 tell me what those are, then I can be of more help during the
9 course of the deposition.

10 MR. CROSS: Okay. Thank you, Your Honor.

11 MR. BELINFANTE: Thank you.

12 THE COURT: So I'm going to hold off on ruling on
13 that until you have made any progress or -- and I'll give you
14 a -- I think that --

15 Harry, when do you think we're going to hear from
16 Brendle?

17 COURTROOM DEPUTY CLERK: I don't know. I was hoping
18 today, but she didn't give me any indication.

19 THE COURT: We'll get back to you by the beginning of
20 next week. I think we'll know then at least.

21 MR. BELINFANTE: All right. Thank you, Your Honor.

22 THE COURT: All right. Well, we'll get back to you
23 by the end of the day. And thank you.

24 And I do acknowledge that it is nicer to see
25 people -- their real faces. And I think, you know, for me I

1 can understand who is talking because I have talked with
2 you-all for so many years. For my law clerks, that is a whole
3 other matter. You know, they are saying, who is that?

4 Even though, you know, we have the true protectress
5 here. Ms. Welch always asks you who is speaking. But I think
6 it is harder for them when they hear you.

7 MR. BROWN: Thank you, Your Honor. Mr. Belinfante
8 does look much better in person.

9 MR. BELINFANTE: I'm not sure how to respond to that,
10 Your Honor. It doesn't happen often.

11 THE COURT: I don't know. I think we have a very
12 handsome crew here all together in my view, very smart and very
13 handsome. So -- and obviously the law firm decided to stick
14 with that rule when they picked the next associate.

15 All right. Thank you very much. I appreciate the
16 tenor of the discussion and its thoughtfulness. And I have got
17 these exhibits now. So we'll look at them a little bit more.

18 And thank you.

19 MR. CROSS: Thank you, Your Honor.

20 MR. BROWN: Thank you.

21 COURTROOM SECURITY OFFICER: All rise.

22 **(The proceedings were thereby concluded at 3:06**

23 **PM.)**

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1 C E R T I F I C A T E
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3 UNITED STATES OF AMERICA
4

NORTHERN DISTRICT OF GEORGIA
5

I, SHANNON R. WELCH, RMR, CRR, Official Court Reporter of
the United States District Court, for the Northern District of
Georgia, Atlanta Division, do hereby certify that the foregoing
83 pages constitute a true transcript of proceedings had before
the said Court, held in the City of Atlanta, Georgia, in the
matter therein stated.

In testimony whereof, I hereunto set my hand on this, the
9th day of September, 2022.

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17 *Shannon R. Welch*
18 SHANNON R. WELCH, RMR, CRR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
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